Claridge Casino & Hotel *and* Sharon Ponzetti *and* Federation of Police, Security & Corrections Officers. Cases 4–CA–24078 and 4–CA–24090

February 24, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On June 19, 1998, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Claridge Casino & Hotel, Atlantic City, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Margarita Navarro-Rivera, Esq., for the General Counsel.
Harold R. Weinrich, Esq. (Jackson, Lewis, Schnitzler & Krupman*),* of Washington, D.C., for the Respondent.
Henry F. Schickling, Esq., of Rahway, New Jersey, for the Federation.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We agree with the judge that the General Counsel has made a prima facie showing that employee Frank White's union activity was a motivating factor in the decision to discharge him. In finding that the Respondent has not established under *Wright Line*, 251 NLRB 1083 (1980), enfd. F.2d 899 (1st Cir. 1981), cert. denied 455 U. S. 989 (1982), that it would have discharged White even in the absence of his union activities, we stress that the judge discredited the testimony of the Respondent's witness Thomas Sparks on which the Respondent relied as the basis for its defense.

The General Counsel has excepted to the judge's finding that an interrogation allegation and a creation of impression of surveillance allegation were untimely. Even assuming their timeliness, we find that, based on the record as a whole, the alleged interrogation does not rise to the level of a violation under *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), and that the impression of surveillance allegation fails because the Respondent's explanation to employees makes clear that its obtaining of information did not involve surveillance of employee union activities

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Philadelphia, Pennsylvania, on January 21 and February 23–24, 1998. The charge in Case 4–CA–24078 was filed July 26, 1995[1] (amended October 23 and 31), and in Case 4–CA–24090 on July 28 (amended September 29). The complaint in Case 4–CA–24078 was issued October 30 (amended February 15, 1996) and in Case 4–CA–24090 on October 16 (amended at the trial). The cases were consolidated on October 30.

This case involves the discharge of union organizer Francis "Frank" White, a senior security officer who had recently received a commendation from Executive Director of Security Robert McLaughlin for his "fine job performance" and his "dedication to the Security Department and the Claridge [Casino and Hotel] as a whole."

The Company had carried on a vigorous antiunion campaign in the recent union organizing drive and had excluded White from its employee meetings because of his union activity. It admits that "White was one of the primary in-house organizers," having "arranged meetings and distributed authorization cards outside the employee entrance."

The Company claims, without any direct evidence, that White "threatened injury" to security officer John Gradia and later "reinforced this threat by the use of physical force."

To the contrary, the credible testimony by White and two other eye witnesses, security officer John Pollock and fire control officer Edward Ponzetti, reveals that in the cafeteria before their shift, on their way to turn in their food trays before going downstairs for the roll call, White momentarily stopped by Gradia's table. As White credibly testified, he warned Gradia that "if you ever call me on the phone like that again and cuss me out again, I'll make sure you can never do that to anybody else." Gradia stood up, but White turned and walked on. The whole incident took an estimated 3 seconds.

White was referring to Gradia's phoning him at home to complain about his supporting the Federation of Police, Security & Corrections Officers instead of a union that Gradia favored. White's testimony is undisputed that Gradia "called me up and cussed me out; he went on like a mad man," telling White "you're a crazy God-damn idiot" and asking, "Who in the fuck do you think you are, picking out what union's going to represent security officers of the Claridge?" and "What are you, trying to be king"—continuing until "finally I hung up on him."

After walking behind Pollock and Ponzetti and turning in his tray, White went with them from the cafeteria on the fourth floor to the roll call area on the mezzanine to get their assignments for the day. There, in a small confined area, about 25 or 30 security officers were waiting for their assignments to be handed out. The only time White was anywhere near Gradia was when he walked around Gradia, reaching for his assignment, and perhaps brushing against Gradia. As he stepped aside to read his assignment, he saw Gradia pointing at him, but White paid no attention and went on to work.

The Company offered no direct testimony at the trial to dispute this credible testimony. It called only two defense witnesses, Thomas Sparks, the new director of security (hired after

[1] All dates are 1995 unless otherwise indicated.

the recent Board election to replace McLaughlin), and Vice President of Human Resources John Ceresani.

Instead of presenting eye witnesses, who would be subject to cross-examination, the company counsel offered (over hearsay objections) their conflicting handwritten statements—not for the truth of what happened, but solely to show why Sparks "acted the way he did" concerning the suspension and discharge of White.

Later in the trial, after the statements were received for that limited purpose, the counsel shifted the Company's position and contended that the statements were prepared and retained in the normal course of business and are "admissible for the truth of the matters asserted" and "would be admitted under the business records exception to the hearsay rule." This clearly unfounded contention was rejected.

In its brief, the Company relies on Sparks' grossly conflicting testimony.

The Company ignores evidence indicating that Security Shift Supervisor Matthew Steinmetz (under Sparks) disapproved of White's being discharged. It is undisputed, as White credibly testified, that when he left Sparks' office after being suspended and was handing Steinmetz his radio, Steinmetz said, "Frank, this is bullshit," meaning his being fired.

The Company also ignores White's undisputed testimony that at the time of the suspension, Sparks stated "he really liked me but he had to suspend me"—indicating that the discharge decision was not being made by him, but by the Human Resources Department.

The primary issue is whether the Company, the Respondent, discriminatorily discharged Francis White because of his union activity, violating Section 8(a)(3) and (1) of the National Labor Relations Act.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, operates a casino and hotel in Atlantic City, New Jersey, where it annually derived over $500,000 in gross revenue and receives goods valued over $50,000 directly from outside the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Federation is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. White's Discharge

Francis "Frank" White, who had been a security officer at the Company's casino since 1989 (Tr. 7, 59—all Tr. references to pages of the Feb. 23–24 transcripts), was highly regarded as an employee. On August 17, 1994, Executive Director of Security Robert McLaughlin wrote him the following letter of commendation (R. Exh. 6):

> I am very proud to take this opportunity to comment on your fine job performance on August 15, 1994 during an attempted purse theft incident. It is reassuring to know that when members of the Security Department are faced with difficult and challenging situations they rise to the occasion. . . .
>
> . . . .
>
> Again, Frank, thank you for your continued dedication to the Security Department and the Claridge as a whole. . . . I would like to invite you and a guest to enjoy a meal at The Garden Room Restaurant at your convenience.

White's union organizing activity, however, was not appreciated. In November 1994, less than a year after the Company defeated an effort by another union to organize the Security Department, White began an active campaign to organize the security officers for the Federation. (The Company admits in its brief, at 13, that "White was one of the primary in-house organizers," having "arranged meetings and distributed authorization cards outside the employee entrance.") As in the earlier organizing drive, the Company carried on a vigorous campaign against having the security officers organized. Because of White's union activity, the Company did not invite him (after the first meeting) to the employee meetings it held in opposing the Federation. (Tr. 7–25, 69–70, 278–280; G.C. Exhs. 8–12.)

The Company's animus toward White for his union activity is further demonstrated by an incident on March 27, shortly before the April 6 election. It is undisputed, as White credibly testified, that Quentin Nelson, Director of Employee/Labor Relations in the Human Resources Department (Tr. 25–26)

> came out of an elevator and came over and shook my hand and he started grimacing in my face, and . . . . he was holding real tightly to my hand, and he was making faces at me. And he took about 3 steps back and he pretended like I was nuts, and he went like this [making a circle to the right of his head] and he said, we'll see what happens on April 6 . . . . And security officer Lee, the next post over, saw this.

Neither Nelson nor Lee testified. (By his demeanor on the stand, White impressed me most favorably as a truthful, forthright witness.)

White also credibly testified that about the middle of March, before the April 6 election, security officer John Gradia called him at home about 1 or 2 a.m., trying to persuade him to switch his support to another union. He refused. About a week later, when learning that "the Labor Board wouldn't go along with having another union on the ballot," Gradia (who was on medical leave) called White on Sunday afternoon (Tr. 26–28, 71–74):

> John Gradia called me and cussed me out; he went on like a mad man. . . . Who in the fuck do you think you are picking out what union's going to represent the security officers at the Claridge? Who in the hell do you think you are? What are you, trying to be king? . . . And he went on like 10 minutes. So finally I hung up on him.
>
> . . . .
>
> A. He told . . . me . . . you're a crazy God-damn idiot. . . . And he just went on constantly like that. . . . I couldn't even talk to the man.

The first time White saw Gradia after that was in the cafeteria on Memorial Day, May 29, when Gradia returned from medical leave. White arrived around 3:30 for the 4–12 shift and sat with security officer John Pollock and fire control officer Edward Ponzetti in the back of the cafeteria. Gradia was sitting

[2] The General Counsel's unopposed motion to correct the transcript, dated May 28, 1998, is granted and received in evidence as G.C. Exh. 31.

toward the front with security officer Michael Davis. (Tr. 7, 27–29, 122, 143–144, 148–149.)

Shortly before shift time, when White, Pollock, and Ponzetti were on their way to turn in their food trays before going downstairs for the roll call, White saw Gradia and stopped momentarily at his table. As White credibly testified, he warned Gradia in a normal voice that "*if you ever call me on the phone like that again and cuss me out again, I'll make sure you never do that to anybody else* [emphasis added]." Gradia stood up, but said nothing. White turned and walk on behind Pollock and Ponzetti and turned in his tray. He then went with them from the cafeteria on the fourth floor to the roll call area on the mezzanine. (Tr. 28–30, 74–75, 77–78, 117–118, 123, 127–128, 144, 149–150.)

As Ponzetti credibly testified on cross-examination, White "said his piece [to Gradia in the cafeteria], he was done with it and that was it; done and over" (Tr. 140).

On this busy Memorial Day, there were about 25 or 30 security officers waiting for their assignments in the small, confined roll call area. White saw Gradia and Davis in the crowded group. Gradia was standing in front of sergeant Hunter, who was passing out the assignments. White remembers that either Security Supervisor Brian Yocum or Richard Stockette was standing nearby. The only time White was anywhere near Gradia was when he walked around Gradia, reaching for his assignment. Although Pollock, who was standing next to White, credibly testified that he did not see White touch Gradia, White believes that he may have brushed against him. (Tr. 30, 36–37, 42, 52, 88–90, 145–146; G.C. Exh. 5.)

On cross-examination Pollock credibly testified that he himself might have touched Gradia's arm. "I mean, we touch each other everyday in there; it's too confining. That's what the problem is; it's too confining. It's a giant walk-in closet; that's what it is. Our roll call area is a disgrace." (Tr. 168.)

After receiving his assignment sheet for the day, White stepped aside to read his schedule. He then saw Gradia pointing at him without saying anything, but White paid no attention and went on to work. (Tr. 30–31, 38.) This was about 5 minutes after the cafeteria incident (Tr. 97–98).

About an hour and a half later, White was called to the office, where Supervisors Yocum and Stockette asked him about the cafeteria incident, without mentioning anything about him brushing against Gradia in the roll call area. Yocum said, "Well, John [Gradia] says that you said that you were going to break his fucking neck." White responded, "I don't think I used those words, but that's what I meant." He tried to explain about Gradia calling him at home and "raising hell" harassing him, but "They didn't want to hear too much about that." (Tr. 45–46, 96.)

Yocum said White had to make a statement about the incident. Thinking that it was a private matter between himself and Gradia and thinking that making a statement was "ludicrous"—because employees were having arguments in the cafeteria all the time and this incident lasted only an estimated 3 seconds, not a 15-minute argument "disrupting the whole place"—White was reluctant to make a written statement. When Yocum said it would be better for him if he did, White asked Stockette if he was in trouble over the incident. Stockette said that "No, no, I don't think you're in trouble over this. You have a pretty good record. There's no reason why you should be in any trouble over this." (Tr. 46–48, 76, 79–81, 102.)

White then wrote an incident report (R. Exh. 1), stating that at 3:45 p.m. on May 29 in the employees cafeteria, he

> saw John Gradia in cafeteria. Went over to him and said not to ever call me again on the phone, because the last time he called me he called me every kind of son of a bitch. Called me every curse word he could. In fact he went on for about five minutes till I finally hung up on him. This was the second time. He called me a few days before. He called me at two o'clock in the morning and went on for about five minutes. Which had me very upset.
>
> John Gradia stood up like he wanted to fight. I walked away.

The next day Security Shift Supervisor Matthew Steinmetz approached White on the casino floor and jokingly said, "I heard you had a little trouble with John Gradia last night." White answered that Gradia had called and harassed him in March, that Gradia did not have a phone, and "I couldn't get in touch with him any other way so I told him off up in the cafeteria." Steinmetz "laughed about it" and said, "Well, if it ever happens again, take it outside; don't tell him off inside the building" and went on his way, laughing about it. There was no mention about any discipline. (Tr. 48–49.) Steinmetz, in charge of the whole shift, was next in command under Security Director Sparks (Tr. 103, 185).

The next thing White heard about the incident was the following day, May 31, when Security Director Sparks (who replaced McLaughlin on May 1) called him in the office and, without asking him what happened, suspended him and sent him home, telling him that his job was at stake. Sparks handed him a disciplinary action notice, dated May 31, stating that White had "displayed a rude and discourteous behavior and also used profanity and physical force toward a coworker" and that "Final Determination" would be made on June 3. White asked, "What physical force?" Sparks put his hand over and patted his left elbow and said "the physical force had happened when I had gotten my assignment." White protested that nothing had been said about any physical force. (Tr. 50–52, 93–96; G.C. Exh. 6.)

That was when Sparks indicated that the discharge was not his determination. It is undisputed, as White credibly credible, that Sparks said "he really liked me but he had to suspend me" (Tr. 51, 54). Particularly because of Sparks' conflicting testimony about his contacts with Vice President of Human Resources Ceresani and other personnel in the Human Resources Department about the incident, as discussed below, I find that Sparks was indicating that the discharge decision was not being made by him, but by Human Resources.

White told Sparks he was amazed "that they come up" with "physical force toward a coworker" because "they never asked me about it 2 days earlier" (Tr. 52). He wrote on the suspension notice, under "Employee's Comments": "I had no physical contact with John Gradia. We may have brushed each other walking by," meaning "walking by to get my schedule." (Tr. 53; G.C. Exh. 6.)

On cross-examination White explained (Tr. 96): "And if something would have happened between me and John Gradia in front of the supervisor [at the roll call], I should think that they would drag me in the office right away, not 2 days later."

Upon leaving Sparks' office, White turned his radio in to Shift Supervisor Matthew Steinmetz, whose office was next door. Steinmetz then indicated that he did not approve of White

being discharged. It is undisputed that Steinmetz said, "Frank, this is bullshit" for his being fired over the incident. (Tr. 103–104.)

On June 2 Sparks telephoned White and told him he was discharged (Tr. 54. 98). The discharge notice, dated June 3, read (G.C. Exh. 7):

> Based on the information provided, including your statement and admission to the incident that occurred on May 29, 1995 where you displayed rude and discourteous behavior and physical force toward a coworker, a final determination has been made. The final determination is that your employment is terminated.

The notice was signed by Steinmetz, who on May 30 had joked and laughed about the incident, advising White that if Gradia's harassment "ever happens again, take it outside; don't tell him off inside about it" and who on May 31, after Sparks suspended White and sent him home, told White, "Frank, this is bullshit" for his being fired over the incident.

B. Shifting positions

Instead of offering direct evidence in its defense, the Company over objections offered three unsworn, out-of-court written statements and the hearsay testimony of Security Director Sparks—not for their truth but solely to show why he "acted the way he did" concerning the suspension and discharge of White. The Company took the position, as stated by its counsel, that "certainly, through cross-examination," the General Counsel "can determine whether or not Mr. Sparks has testified truthfully with respect to the information that was reported to him." (Tr. 189–197.) The counsel added (Tr. 191–192):

> I submit that the truth with respect to what happened between Mr. White and Mr. Gradia may be interesting. But it was the information that was reported to Mr. Sparks that Mr. Sparks acted upon which is relevant to the [discharge] decision.

Then, at the close of Sparks' direct testimony, after the statements and testimony were received for the stated limited purpose, the company counsel shifted the Company's position. He contended that the statements were prepared and retained in the normal course of business and are "admissible for the truth of the matters asserted" and "would be admitted under the business records exception to the hearsay rule." This clearly unfounded contention was rejected. (Tr. 226–230.)

The Company proceeded with the trial, without offering any direct evidence.

Thus the Company relies in this case on Sparks' credibility, in testifying not only that he was the one who decided to discharge White, but that he relied on the conflicting hearsay statements.

C. Sparks' Grossly Conflicting Testimony

In support of his claim that he made the decision to discharge White, Security Director Sparks clearly gave grossly conflicting testimony.

Contrary to the credited evidence and also to the wording of the discharge notice (G.C. Exh. 7, that White "displayed rude and discourteous behavior"), Sparks claimed that Shift Supervisor Steinmetz reported to him that White "threatened" bodily harm. He then testified that he personally interviewed the three employees who gave written statements and "We had a meeting *after all the interviews* [emphasis added] and determined that [White] would be suspended." (Tr. 188, 192, 203; R. Exhs. 7–9.)

Regarding this meeting, Sparks testified that he and Steinmetz met with "some representative from Human Resources," naming Vice President of Human Resources John Ceresani, Employee/Labor Relations Quentin Nelson, and Labor Relations Manager Karen Tierney. "I recommended suspension and they concurred."

Sparks next testified that "there is constant communications between the Security Department and the [Human Resources Department] about what steps we're taking," that "I had numerous conversations with Human Resources about this case prior to the suspension," that Steinmetz, Ceresani, Nelson, and Tierney were involved, that "There was 5 people who had input into it," and that "Whether we were all in the same room at the same time, I don't recollect." (Tr. 211–212.)

Sparks next testified: "When I say there was a meeting, there was conversations. I know I went over to Human Resources and sat in the office and spoke to them. . . . I don't remember if there was 5 people in the room at the time. . . . My present recollection is I don't remember who was in the meeting, and if there was 5 or 6 or 3 people in the meeting. I do know that I consulted with Human Resources, told them what I thought, got their input, and made a decision.'' (Tr. 212–213.)

Sparks finally admitted that when he suspended White, he had not personally interviewed the witnesses about the incident (Tr. 216). I note that Vice President Ceresani (the only other defense witness) testified that when Sparks reported the incident to him, Sparks was still in the process of gathering all the information and wanted to know "what my feeling was as far as the next step" and "I told him that he should place Mr. White on investigative suspension" (Tr. 258–259).

Meanwhile Steinmetz prepared a three-page summary of the investigation, suspension, and discharge, based in part on what Sparks admittedly told him had occurred. Without explanation, the summary completely omits any reference to Sparks' meetings or conversations with anyone in Human Resources before he suspended White on the May 31. (Tr. 208–209; R. Exh. 10.)

Thus, when Sparks reported the incident to Ceresani, who advised him to immediately suspend White, Sparks was relying solely on the hearsay written statements and what he claimed Steinmetz reported to him about the incident. This information was obviously conflicting.

According to Sparks, Steinmetz reported that White had "threatened" bodily harm, used abusive foul language, and 10 minutes later in the roll call room, "deliberately shoved Gradia" (Tr. 192–193). Neither Gradia nor Davis stated in their written statements that there was a "threat," but stated instead that White said he "should" break Gradia's "fucking neck" (R. Exhs. 8, 9). In contrast, employee Herald (who was sitting with Gradia and Davis, stated in his written statement that "It was too noisy for me to hear what was said" (R. Exh. 7).

Concerning what later happened in the roll call area, Gradia asserted in his statement that White cursed him upon entering the area, and after he got his assignment, White again cursed and "pushed me." Davis, however, asserted nothing in his statement about any cursing in the roll call area and asserted only that White gave Gradia an "elbow" to the side.

I note that when Sparks testifying about what he was told when he interviewed Davis and Gradia, he went further and claimed that both of them told him that White *threatened* Gradia in the cafeteria. Sparks claimed that Davis said that White

told Gradia he was "going to" break his neck, that it was a "threat," and that White was "very loud" (contrary to what Sparks testified he was told by Herald, who was sitting with them, that Herald "didn't hear the words that were used by Frank White"). Similarly Sparks claimed that White stated he was "going to" break his neck and that it was "threatening." (Tr. 194–199.)

Regarding the wording of the May 31 suspension notice (G.C. Exh. 6), which made no reference to White's "threatening" Gradia (stating instead that White "displayed a rude and discourteous behavior"), Sparks first testified that Steinmetz typed it and that they discussed "what to put in" it (Tr. 204). He later contradicted himself again, positively testifying that no, he "did not help him word" it (Tr. 238).

By Sparks' demeanor on the stand, he appeared willing to fabricate any testimony that might help the Company's cause.

D. Concluding Findings

From all the evidence, I find that Sparks was attempting to conceal the fact that the decisions to suspend and discharge White were made by the Resource Department, who prepared the suspension and discharge notices. Contrary to Sparks' claims about White "threatening" Gradia and the Company's contention that White "threatened injury" to Gradia and "reinforced this threat by the use of physical force," both the suspension and discharge notices referred to provisions in the Company's Policies and Procedures Manual on Conduct on the Job, that the use of "Rude or discourteous behavior," "profane or abusive language," and "physical force against employees" were grounds for disciplinary action, including termination.

I find that the Company seized on Gradia's complaint about the brief incident in the cafeteria and the purported "pushing" in the roll call area as a pretext for ridding the payroll of White, an employee who was highly regarded for his "dedication to the Security Department and the Claridge as a whole," but who was "one of the primary in-house organizers"—before he could engage in another drive to organize the Security Department. It had demonstrated it animus toward him for his union activity.

I further find that the Company's defense, that it "reasonably believed" that White "had engaged in misconduct of a level warranting termination," *Jordan Marsh Stores Corp*., 317 NLRB 460, 476 (1995), is based on Sparks' fabricated testimony.

I therefore find that in view of the Company's animus toward White because of his union activity and the clearly fabricated testimony of Sparks, resulting in part from his efforts to conceal the fact that the Human Resource Department had made the decisions to suspend and discharge White, I find that the General Counsel has made a prima facie showing sufficient to support an inference that White's union activity was a motivating factor in the Company decision to discharge him. *Wright Line*, 251 NLRB 1083 (1983).

Having found that the Company's defense for discharging White is pretextual and that the credited evidence shows that the Company's contentions that White "threatened injury" to Gradia and "reinforced this threat by the use of physical force" are false, I find that the Company has failed to meet its burden of proof that it would have discharged him in the absence of his union activity.

Accordingly I find that the Company discriminatorily discharged Francis White on June 2, 1995, because of his union activity, in violation of Section 8(a)(3) and (1) of the Act.

In making this finding, I deem it unnecessary to rely as background on the untimely filed charges that the Company coercively interrogated an employee and created the impression that union activities were under surveillance.

CONCLUSION OF LAW

By discriminatorily discharging Francis White on June 2, 1995, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Claridge Casino & Hotel, Atlantic City, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Federation of Police, Security & Corrections Officers or any other union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Francis White full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Francis White whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Atlantic City, New Jersey, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Federation of Police, Security, & Corrections Officers or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL , within 14 days from the date of the Board's Order, offer Francis White full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Francis White whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL , within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Francis White and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

CLARIDGE CASINO & HOTEL